

(2) For issuance of a license subsequent to a radio station authorization or, pending application for a grant of such license, any special or temporary authorization to permit interim operation to facilitate completion of authorized construction or to provide substantially the same service as would be authorized by such license;

(3) For temporary authorization pursuant to section 27.314;

(4) For an authorization under any of the proviso clauses of section 308(a) of the Communications Act of 1934 (47 U.S.C. section 308(a));

(5) For consent to an involuntary assignment or transfer of control of a radio authorization;  
or

(6) For consent to a voluntary assignment or transfer of control of a radio authorization, where the assignment or transfer does not involve a substantial change in ownership or control.

#### **§ 27.317 Dismissal and return of applications.**

(a) Any application may be dismissed without prejudice as a matter of right if the applicant requests its dismissal prior to designation for hearing or, in the case of applications filed on Forms 175 and 175-S, prior to auction. An applicant's request for the return of his application after it has been accepted for filing will be considered to be a request for dismissal without prejudice. Applicants requesting dismissal of their applications are also subject to section 27.203 of this chapter.

(b) A request to dismiss an application without prejudice will be considered after designation for hearing only if:

(1) A written petition is submitted to the Commission and is properly served upon all parties of record; and

(2) The petition complies with the provisions of this section and demonstrates good cause.

(c) The Commission will dismiss an application for failure to prosecute or for failure to respond substantially within a specified time period to official correspondence or requests for additional information. Dismissal shall be without prejudice if made prior to designation for hearing or prior to auction, but dismissal may be made with prejudice for unsatisfactory compliance or after designation for hearing or after the applicant is notified that it is the winning bidder under the auction process.

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**§ 27.319 Ownership changes and agreements to amend or to dismiss applications or pleadings.**

(a) Applicability. Subject to the provisions of section 27.204 of this chapter (Bidding Application and Certification Procedures; Prohibition of Collusion), this section applies to applicants and all other parties interested in pending applications who wish to resolve contested matters among themselves with a formal or an informal agreement or understanding. This section applies only when the agreement or understanding will result in:

(1) A major change in the ownership of an applicant to which sections 27.313(c) and 27.313(g) apply or which would cause the applicant to lose its status as a designated entity under section 27.210(b), or

(2) The individual or mutual withdrawal, amendment or dismissal of any pending application, amendment, petition or other pleading.

(b) The provisions of section 27.207 of the Commission's Rules will apply in the event of the filing of petitions to deny or other pleadings or informal objections filed against WCS applications. The provisions of section 27.317 of the Commission's Rules will apply in the event of dismissal of WCS applications.

**§ 27.320 Opposition to applications.**

(a) Petitions to deny (including petitions for other forms of relief) and responsive pleadings for Commission consideration must comply with section 27.207 and must:

(1) Identify the application or applications (including applicant's name, station location, Commission file numbers and radio service involved) with which it is concerned;

(2) Be filed in accordance with the pleading limitations, filing periods, and other applicable provisions of sections 1.41 through 1.52 of this chapter except where otherwise provided in section 27.207;

(3) Contain specific allegations of fact which, except for facts of which official notice may be taken, shall be supported by affidavit of a person or persons with personal knowledge thereof, and which shall be sufficient to demonstrate that the petitioner (or respondent) is a party in interest and that a grant of, or other Commission action regarding, the application would be prima facie inconsistent with the public interest;

(4) Be filed within five (5) days after the date of public notice announcing the acceptance for filing of any such application or major amendment thereto (unless the Commission otherwise extends the filing deadline); and

(5) Contain a certificate of service showing that it has been hand delivered to the applicant no later than the date of filing thereof with the Commission.

(b) A petition to deny a major amendment to a previously filed application may only raise matters directly related to the amendment which could not have been raised in connection with the underlying, previously filed application. This does not apply to petitioners who gain standing because of the major amendment.

(c) Parties who file frivolous petitions to deny may be subject to sanctions including monetary forfeitures, license revocation, if they are FCC licensees, and may be prohibited from participating in future auctions.

#### **§ 27.321 Mutually exclusive applications.**

(a) Two or more pending applications are mutually exclusive if the grant of one application would effectively preclude the grant of one or more of the others under the Commission's rules governing the Wireless Communications Services involved. The Commission uses the general procedures in this section for processing mutually exclusive applications in the Wireless Communications Services.

(b) An application will be entitled to comparative consideration with one or more conflicting applications only if the Commission determines that such comparative consideration will serve the public interest.

#### **§ 27.322 Consideration of applications.**

(a) Applications for an instrument of authorization will be granted if, upon examination of the application and upon consideration of such other matters as it may officially notice, the Commission finds that the grant will serve the public interest, convenience, and necessity. See also section 1.2108 of this chapter.

(b) The grant shall be without a formal hearing if, upon consideration of the application, any pleadings or objections filed, or other matters which may be officially noticed, the Commission finds that:

(1) The application is acceptable for filing, and is in accordance with the Commission's rules, regulations, and other requirements;

(2) The application is not subject to a post-auction hearing or to comparative consideration pursuant to section 27.322 with another application(s);

(3) The applicant certifies that the operation of the proposed facility would not cause harmful electromagnetic interference to another authorized station;

(4) There are no substantial and material questions of fact presented; and

(5) The applicant is qualified under current FCC regulations and policies.

(c) If the Commission should grant without a formal hearing an application for an instrument of authorization which is subject to a petition to deny filed in accordance with section 27.319, the Commission will deny the petition by the issuance of a concise statement for the reason(s) for the denial and dispose of all substantial issues raised by the petition.

(d) Whenever the Commission, without a formal hearing, grants any application in part, or subject to any terms or conditions other than those normally applied to applications of the same type, it shall inform the applicant of the reasons therefor, and the grant shall be considered final unless the Commission should revise its action (either by granting the application as originally requested, or by designating the application for a formal evidentiary hearing) in response to a petition for reconsideration which:

(1) Is filed by the applicant within thirty (30) days from the date of the letter or order giving the reasons for the partial or conditioned grant;

(2) Rejects the grant as made and explains the reasons why the application should be granted as originally requested; and,

(3) Returns the instrument of authorization.

(e) The Commission will designate an application for a formal hearing, specifying with particularity the matters and things in issue, if, upon consideration of the application, any pleadings or objections filed, or other matters which may be officially noticed, the Commission determines that:

(1) A substantial and material question of fact is presented (see also section 1.2108 of this chapter);

(2) The Commission is unable for any reason to make the findings specified in paragraph (a) of this section and the application is acceptable for filing, complete, and in accordance with the Commission's rules, regulations, and other requirements; or

(3) The application is entitled to concurrent consideration (under section 27.321) with another application (or applications).

(f) The Commission may grant, deny or take other action with respect to an application designated for a formal hearing pursuant to paragraph (e) of this section or part 1 of this chapter.

(g) Reconsideration or review of any final action taken by the Commission will be in accordance with part 1, subpart A of this chapter.

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**§ 27.323 Reserved.**

**§ 27.324 Transfer of control or assignment of station authorization.**

(a) Authorizations shall be transferred or assigned to another party, voluntarily (for example, by contract) or involuntarily (for example, by death, bankruptcy, or legal disability), directly or indirectly or by transfer of control of any corporation holding such authorization, only upon application and approval by the Commission. A transfer of control or assignment of station authorization in the Wireless Communications Service is also subject to section 27.209 of this chapter.

(1) A change from less than 50% ownership to 50% or more ownership shall always be considered a transfer of control.

(2) In other situations a controlling interest shall be determined on a case- by-case basis considering the distribution of ownership, and the relationships of the owners, including family relationships.

(b) Form required:

(1) Assignment.

(i) FCC Form 490 shall be filed to assign a license or permit.

(ii) In the case of involuntary assignment, FCC Form 490 shall be filed within 30 days of the event causing the assignment.

(2) Transfer of control.

(i) FCC Form 490 shall be submitted in order to transfer control of a corporation holding a license or permit.

(ii) In the case of involuntary transfer of control, FCC Form 490 shall be filed within 30 days of the event causing the transfer.

(3) Notification of completion. The Commission shall be notified by letter of the date of completion of the assignment or transfer of control.

(4) If the transfer of control of a license is approved, the new licensee is held to the original renewal requirement of section 27.14.

(c) In acting upon applications for transfer of control or assignment, the Commission will not consider whether the public interest, convenience, and necessity might be served by the transfer or assignment of the authorization to a person other than the proposed transferee or assignee.

(d) Applicants seeking to transfer their licenses within three years after the initial license grant date are required to file, together with their transfer application, the associated contracts for sale, option agreements, management agreements, and all other documents disclosing the total consideration to be received in return for the transfer of the license.

(e) Partial assignment of authorization. If the authorization for some, but not all, of the facilities of a Wireless Communications Service station is assigned to another party, voluntarily or involuntarily, such action is a partial assignment of authorization.

(1) To request FCC approval of a partial assignment of authorization, the following must be filed in addition to the forms required by paragraph (b) of this section:

(i) The assignee must apply for authority (FCC Form 600) to operate a new station including the facilities for which authorization is assigned, or to modify the assignee's existing station to include the facilities for which authorization was assigned.

#### **§ 27.325 Termination of authorization.**

(a) All authorizations shall terminate on the date specified on the authorization, unless a timely application for renewal has been filed.

(b) If no application for renewal has been made before the authorization's expiration date, a late application for renewal will only be considered if it is filed within 30 days of the expiration date and shows that the failure to file a timely application was due to causes beyond the applicant's control. Service to subscribers need not be suspended while a late filed renewal application is pending, but such service shall be without prejudice to Commission action on the renewal application and any related sanctions. See also section 27.14 (Criteria for Comparative Renewal Proceedings).

(c) Special Temporary Authority. A special temporary authorization shall automatically terminate upon failure to comply with the conditions in the authorization.

### **PART 97 -- AMATEUR RADIO SERVICE**

1. The authority citation for part 97 continues to read as follows:

AUTHORITY: 48 Stat. 1066, 1082, as amended; 47 U.S.C. sections 154, 303. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. sections 151-155, 301-609, unless otherwise noted.

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2. Section 97.303(j) is revised to read as follows:

**§ 97.303 Frequency sharing requirements.**

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(j) In the 13 cm band:

(1) The amateur service is allocated on a secondary basis in all ITU Regions. In ITU Region 1, no amateur station shall cause harmful interference to, and shall be not protected from interference due to the operation of, stations authorized by other nations in the fixed and mobile services. In ITU Regions 2 and 3, no amateur station shall cause harmful interference to, and shall not be protected from interference due to the operation of, stations authorized by other nations in the fixed, mobile and radiolocation services.

(2) In the United States:

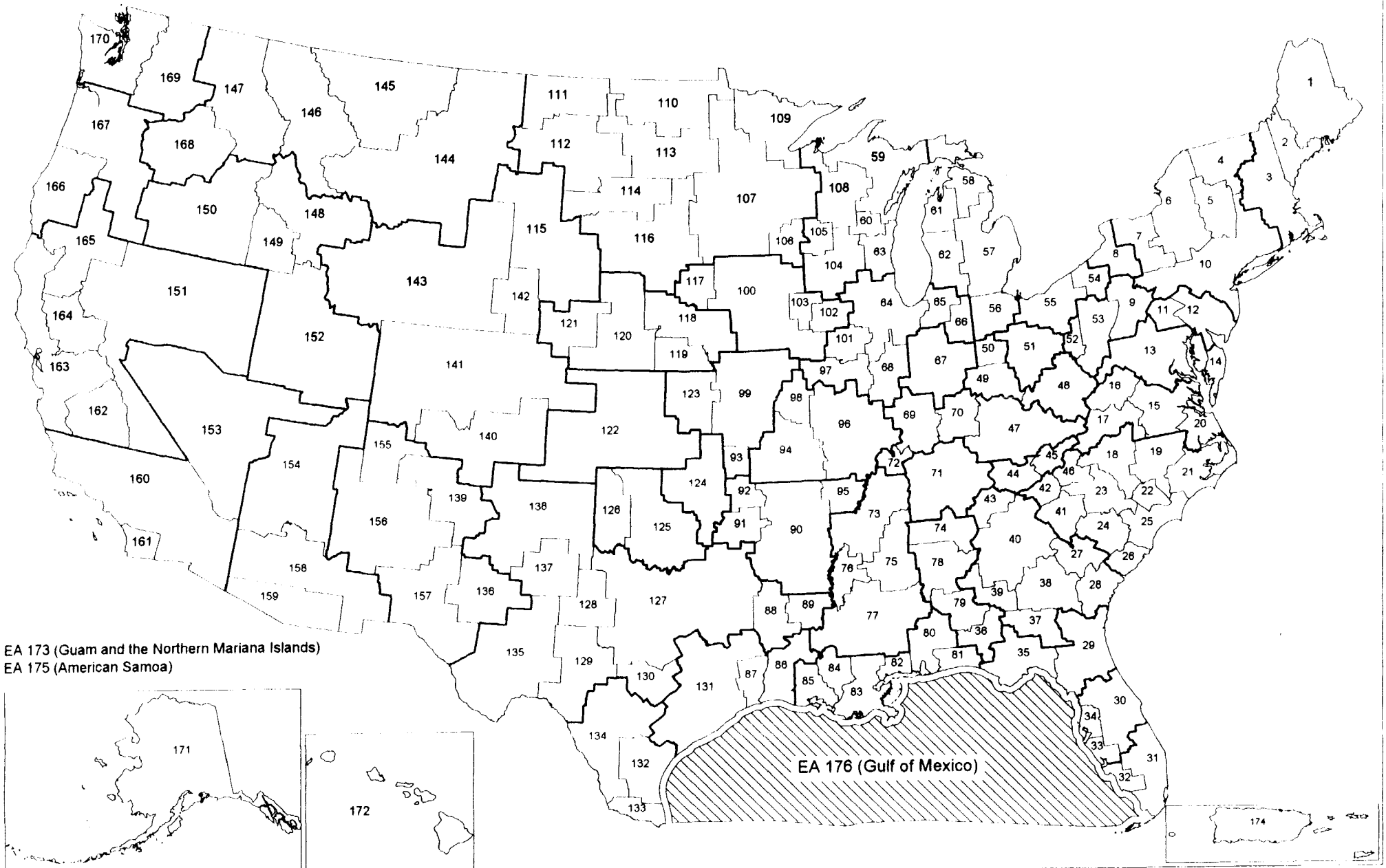
(i) The 2300-2305 MHz segment is allocated to the amateur service on a secondary basis. (Currently the 2300-2305 MHz segment is not allocated to any service on a primary basis.)

(ii) The 2305-2310 MHz segment is allocated to the amateur service on a secondary basis to the fixed, mobile, and radiolocation services.

(iii) The 2390-2400 MHz segment is allocated to the amateur service on a primary basis.

(iv) The 2400-2402 MHz segment is allocated to the amateur service on a secondary basis. (Currently the 2400-2402 MHz segment is not allocated to any service on a primary basis.) The 2402-2417 MHz segment is allocated to the amateur service on a primary basis. The 2417-2450 MHz segment is allocated to the amateur service on a co-secondary basis with the Government radiolocation service. Amateur stations operating within the 2400-2450 MHz segment must accept harmful interference that may be caused by the proper operation of industrial, scientific, and medical devices operating within the band.

# Appendix C: Major Economic Areas (MEAs) and Their Constituent Economic Areas (EAs)

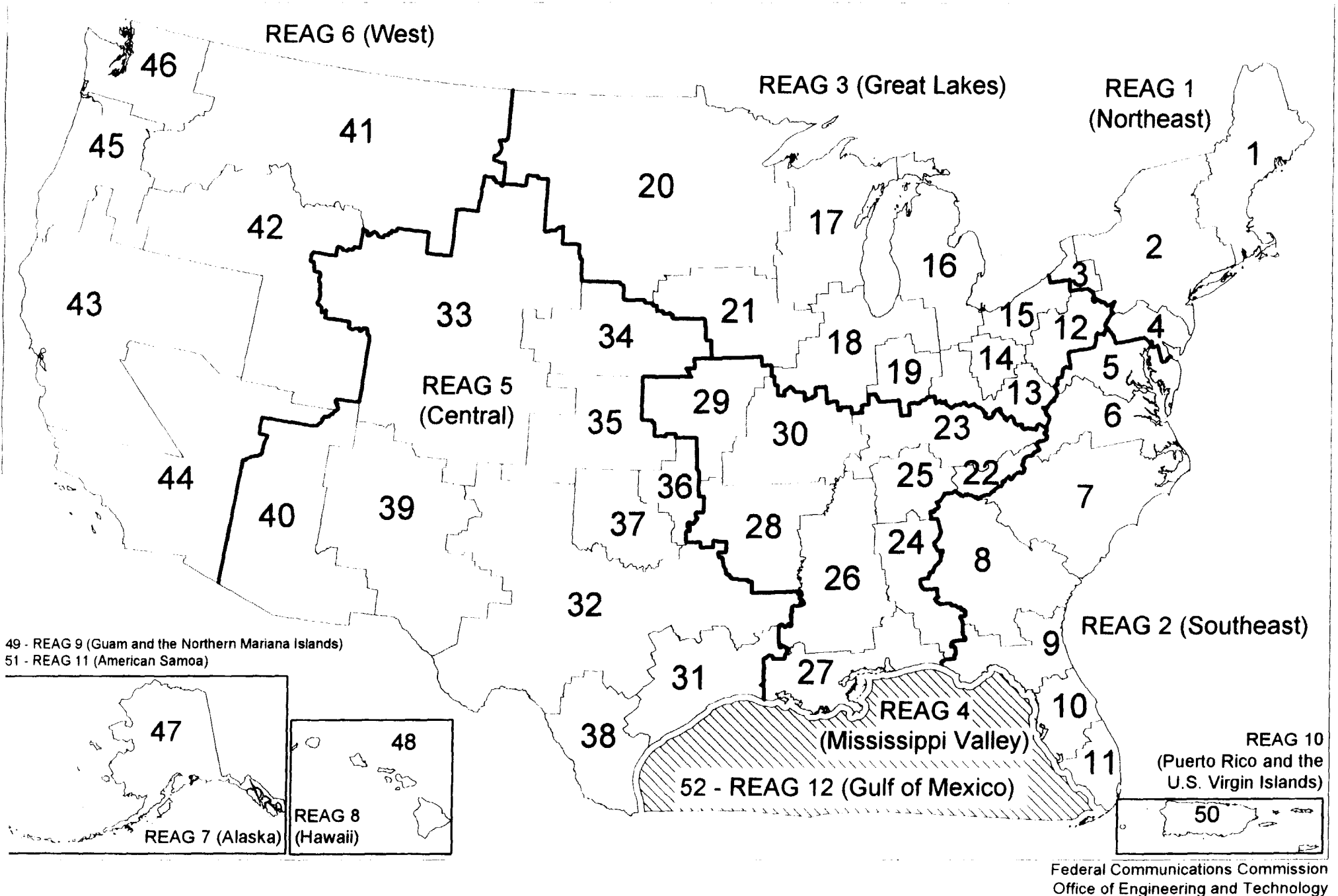


EAs delineated by the Regional Economic Analysis Division  
Bureau of Economic Analysis, U.S. Department of Commerce  
February 1995

Federal Communications Commission  
Office of Engineering and Technology



## Appendix D: Regional Economic Area Groupings (REAGs) and Their Constituent MEAs



**Separate Statement  
of  
Commissioner Susan Ness**

*Re: Wireless Communications Service (GN Docket No. 96-228)*

I write separately to underscore my support for providing the public safety community with adequate and appropriate spectrum to meet its advanced communications needs. Public safety organizations deserve a spectrum plan that will enable different entities -- federal, state and local police, fire and rescue -- to communicate with each other on the same band, and to deploy the most sophisticated communications technologies and services available.

Pursuant to Congressional directive, we took a long and hard look at 2.3 GHz and found it was not suitable for this purpose. However, I am pleased to endorse our recommendation that Congress permit a portion of our spectrum auction proceeds be used to meet public safety communications needs. I also intend to work with my colleagues to craft a comprehensive, long term solution to public safety spectrum needs in our upcoming Report and Order in the Public Safety proceeding (WT Docket No. 96-86).

A Public Safety Wireless Advisory Committee convened by the FCC and NTIA to consider public safety communications needs through the year 2010 issued its Final Report last September. The Report's recommendations and projections document the pressing need for substantial chunks of spectrum for both mobile and fixed wireless communications uses.

Today, public safety uses a hodge-podge of bands across the radio spectrum -- derived by chance rather than through coordinated planning. As a result, police, fire, sheriff, and federal authorities use different radios and frequencies. Tragically, they cannot communicate directly with each other in an emergency unless they maintain multiple radios in their vehicles. This is both inefficient and expensive.

Moreover, new technologies have spawned exciting wireless services to assist our emergency and law enforcement teams. Sufficient broad spectrum is needed to enable these agencies to use these new tools.

Some of the spectrum that will be vacated in the television broadcasting conversion to digital appears to be ideal for public safety mobile needs. Additional microwave spectrum will also be required to connect public safety networks and to link various sites.

As we review our options in the upcoming Public Safety proceeding, we should take care to make the spectrum blocks sufficiently large to foster low cost, spectrum-efficient equipment, and select bands technically appropriate for their intended use.

**SEPARATE STATEMENT OF**  
**COMMISSIONER RACHELLE B. CHONG**

*Re: Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service ("WCS"), Report and Order, GN Docket 96-228*

In this decision, I support our determination not to apply the Commercial Mobile Radio Services (CMRS) spectrum cap to the new Wireless Communications Service (WCS). I write separately to express my belief that the Commission ought to examine whether the CMRS spectrum cap should be retained at all, given the increased competition in the wireless marketplace. I also write separately to reiterate my strong commitment to work with the public safety community to meet its wireless telecommunications needs.

In 1994, the CMRS spectrum cap was originally imposed by the Commission out of concern that "excessive aggregation [of spectrum] by any one of several CMRS licensees could reduce competition by precluding entry by other service providers and might thus confer excessive market power on incumbents."<sup>1</sup> The spectrum cap was intended to promote a vigorous competitive market for the provision of commercial mobile radio services, and to ensure that each mobile service provider has the opportunity to obtain sufficient spectrum to compete effectively.<sup>2</sup> While at the time I believed a CMRS spectrum cap constituted unnecessary government regulation, I was persuaded by my colleagues to go along with the notion until competition increased in the wireless industry.

Three years later, it is my view that the CMRS market is now marked with vigorous and ever increasing competition. Since 1994, we have held auctions for six new PCS licenses in every market and have issued three of those licenses. These PCS entrants compete with the two existing cellular providers in each market. New PCS systems have been placed in operation in twenty-six Major Trading Areas (MTA), and there are now five major cities with two PCS licensees operating. Moreover, the Specialized Mobile Radio (SMR) industry has

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<sup>1</sup> *Implementation of Sections 3(n) and 332 of the Communications Act*, GN Docket No. 93-252, *Third Report and Order*, 9 FCC Rcd 7988, 8101 (1994).

<sup>2</sup> *Id.* at ¶¶ 258-260.

continued to grow at a healthy rate.<sup>3</sup> SMR industry growth should be spurred on by our issuance of twenty new 900 MHz SMR licensees in fifty-one MTAs in 1996.

Thus, I believe that the state of competition in the CMRS market not only justifies our decision today not to apply the cap to the WCS service, but may well justify abolishing the spectrum cap entirely. Accordingly, I would have granted the request of one party in this proceeding who suggested that the Commission initiate a proceeding to look at whether the continued application of the CMRS spectrum cap serves the public interest.<sup>4</sup>

In addition, although I believe that our decision today not to allocate any of the spectrum at 2.3 GHz to public safety was the correct decision for the reasons stated in the Order, I want to reiterate my continuing commitment to address the wireless communications needs of the public safety community. I have made one of my priorities for 1997 to work with the public safety community to find ways to meet its spectrum needs. I believe that the FCC must work diligently to help public safety personnel obtain the extremely reliable, state of the art telecommunications systems that their jobs and -- often human lives -- depend on. I look forward to comprehensively examining the operational, technical and spectrum requirements of the public safety community in our Public Safety proceeding.<sup>5</sup>

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<sup>3</sup> At the end of 1995, more than 2 million vehicles and portable units were served by SMR systems, a gain of 13% since the end of 1994. Land Mobile Radio News, *SMR Industry to Serve 4 Million Subscribers by 2000, Study Predicts*, Feb. 16, 1996.

<sup>4</sup> Comments of AT&T Wireless at 8, fn. 26.

<sup>5</sup> *The Development of Operational, Technical, and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010*, WT Docket No. 96-86. Notice of Proposed Rule Making, 11 FCC Rcd 12460 (rel. April 10, 1996).